
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

<p>HANNAH R. AMAROSA, v. DOCTOR JOHN'S INC., KEN GREENTREE and JOHN COIL, Defendants.</p>	<p style="text-align:center">MEMORANDUM DECISION AND ORDER DENYING MOTION TO DISMISS JOHN COIL</p> <p>Case No. 2:11-CV-676 DN District Judge David Nuffer</p>
---	--

Defendants Doctor John's, Inc. and John Coil filed a motion¹ requesting dismissal of John Coil, an individual defendant. They assert that John Coil is not a subject of the remaining cause of action, which alleges violation of the Employee Polygraph Protection Act (EPPA).² The motion is denied.

DISCUSSION

John Coil was specifically mentioned by name in Plaintiff's second cause of action for violation of the Fair Labor Standards Act³ and in Plaintiff's third cause of action for defamation.⁴ Both those claims have been dismissed.⁵ Plaintiff's first cause of action for violation of the EPPA pleads "for relief and judgment against the Defendants . . ."⁶ While the

¹ Motion to Dismiss Second Cause of Action, [docket no. 99](#), filed July 17, 2014.

² [29 U.S.C. § 2001](#) et seq.

³ [29 U.S.C. § 201](#) et seq.

⁴ Complaint at 12-13, ¶¶ 73, 75, 77, 79, and 81-82, [docket no. 2](#), filed July 22, 2011.

⁵ Memorandum Decision and Order [dismissing Plaintiff's Third Cause of Action for Defamation], [docket no. 84](#), filed July 2, 2014; docket text order, docket no. 113, filed July 21, 2014.

⁶ Complaint at 11.

cause of action does not include his name, the first cause of action pleads for relief against John Coil.

Under the EPPA, “[t]he term ‘employer’ includes any person acting directly or indirectly in the interest of an employer in relation to an employee or prospective employee.”⁷ This has been interpreted broadly, and includes (among others) a person who “decided whether the examined employee would be subjected to disciplinary action.”⁸ Because the proof at trial may show that John Coil affirmed Plaintiff Amarosa’s termination, and concealed the polygraph issues related to her termination,⁹ he may qualify as an employer under the EPPA. Of course, the proof at trial will determine whether this issue will be submitted to the jury.

ORDER

Because the first cause of action pleads for relief against John Coil and because the EPPA is broad enough to permit a claim to be stated against Coil,

IT IS HEREBY ORDERED that the motion to dismiss John Coil¹⁰ is DENIED.

Dated July 25, 2014.

BY THE COURT:



David Nuffer
United States District Judge

⁷ 29 U.S.C. § 2001(2).

⁸ *Calbillo v. Cavender Oldsmobile, Inc.*, 288 F.3d 721, 727 (5th Cir. 2002).

⁹ Complaint ¶¶ 46, 75, 77 and 82.

¹⁰ Motion to Dismiss Second Cause of Action, [docket no. 99](#), filed July 17, 2014.